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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/434,779 05/04/95 SIEVERT

D 3616.85US02

EXAMINER
KENT, C

35M1/1020

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ART UNIT PAPER NUMBER

3504

DATE MAILED:

10/20/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 07/07/95 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-11 and 16-49 are pending in the application.
Of the above, claims — are withdrawn from consideration.
2. ☒ Claims 12-15 have been cancelled.
3. ☐ Claims — are allowed.
4. ☒ Claims 1-11 and 16-49 are rejected.
5. ☐ Claims — are objected to.
6. ☐ Claims — are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on —. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on —, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed —, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. —; filed on —.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

C. Kent

EXAMINER'S ACTION

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The following office action is in response to patent examination application serial number 08/434,779, filed on 05/04/95.

This application is acknowledged to be a divisional of application serial number 08/130,298, filed 10/01/95, pending; which is a continuation in part of application serial number 08/056,986, filed 05/04/95, now abandoned; which is a continuation in part of application serial number 07/957,598, filed 10/06/92, now abandoned.

Acknowledgement is made of the cancellation of claims 12-15 in the transmittal letter received 05/04/95.

Acknowledgement is made of the receipt of the preliminary amendment filed 07/07/95. Claims 17-49 have been added. Claims 1-11 and 16-49 are pending on the merits.

TITLE

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

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ABSTRACT OF THE DISCLOSURE

The Abstract of the Disclosure is objected to because it should be entitled "Abstract of the *Disclosure*". Correction is required. See M.P.E.P. § 608.01(b).

OBJECTION TO THE DRAWINGS

The drawings are objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, a block having an "outwardly curving surface" as in claims 23 and 35; and a block having "two protrusions" as in claims 28, 29 , 38 and 39, must be shown or the feature cancelled from the claim. No new matter should be entered.

OBJECTION TO THE DISCLOSURE

The disclosure is objected to because of the following informalities: the specification lacks discussion of reference 44 of Fig. 12. Appropriate correction is required.

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REJECTION - 35 U.S.C. 112, SECOND PARAGRAPH

Claims 1-5, 11, 16, 21, 22, 28, 29, 38, 39, and 40-48 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the terminology is not consistent; in lines 7 and 8, "one or more protrusions" is not consistent with line 8 and 9 "said protrusion". In claim 11, line 5, "isets" appears to be a typo of "insets". In claims 21 and 22, "from" and "surfaces", respectively, appear to be typos of "front" and "surface". Claims 28, 29, 38 and 39 appear to be contradictory to the claims from which they ultimately depend, claims 17 and 30. Claims 17 and 30 recite a block having "a protrusion" while claims 28, 29, 38 and 39 recite a block having "two protrusions". In claim 40, line 12, "block" appears to be a typo of "blocks,". In claim 48, "claims" appears to be a typo for "claim".

OBVIOUSNESS DOUBLE PATENTING

Claims 1-4, 17, 18, 21-27, 30, 31, 33-41 and 43-49, as understood, are considered to be rejectable over the claimed disclosure of application serial number 08/322,357, which was issued a notice of allowability on 08/23/95, on the basis of

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judicially created non-statutory double patenting [see In re Schneller, 397 F.2d 350;158 USPQ 210 (CCPA 1968)]. A perusal of the instant claims clearly indicates that the subject matter thereof is fully disclosed by the claims of said patent and/or that portion of the patent disclosure which provides support for such claims [see In re Vogel, 422 F.2d 438; 164 USPQ 619 (CCPA 1970)]. Therefore, it is axiomatic that the instant claims are nothing more than obvious variations of the inventions disclosed and claimed in said patent and cannot properly issue in the absence of a terminal disclaimer. Furthermore, it is also clear that the inventor could have included the instant claims in said patent and that if the instant application were to issue without a terminal disclaimer, protection of the previously patented inventions would be improperly extended until the expiration of the instant claims since the utilization of such inventions would infringe the instant claims.

Claim 20 is considered to be provisionally rejectable over the claimed disclosure of application serial number 08/447,757, which is copending, on the basis of judicially created non-statutory double patenting [see In re Schneller, 397 F.2d 350;158 USPQ 210 (CCPA 1968)]. A perusal of the instant claims clearly indicates that the subject matter thereof is fully disclosed by the claims of said patent and/or that portion of the patent

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disclosure which provides support for such claims [see In re Vogel, 422 F.2d 438; 164 USPQ 619 (CCPA 1970)]. Therefore, it is axiomatic that the instant claims are nothing more than obvious variations of the inventions disclosed and claimed in said patent and cannot properly issue in the absence of a terminal disclaimer. Furthermore, it is also clear that the inventor could have included the instant claims in said patent and that if the instant application were to issue without a terminal disclaimer, protection of the previously patented inventions would be improperly extended until the expiration of the instant claims since the utilization of such inventions would infringe the instant claims.

Claims 11, 19, 32 and 40, as understood, are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claimed disclosure of application serial number 08/322,357 in view of Habegger. Application serial number 08/322,357 lacks protrusion sides of the different prescribed angles. This limitation is viewed as an obvious and known choice of design as shown in Habegger Fig. 15. The specific angles of claim 11 are considered design choices in absence of a basis for the selection of the specific choices made.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is

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primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

STATUTORY BASIS - 35 U.S.C. 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

REJECTION - 35 U.S.C. 102

Claims 1, 6, 7, as understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Habegger, Germany, 2,719,107. Habegger (see Fig. 15) teaches a pinless composite masonry block comprising: first and second side surfaces, top and bottom surfaces, and front and back surfaces and at least one protrusion on said top surface. The functional limitations regarding the angles of the sides are considered to be met by the structure of Habegger.

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Regarding claim 6, Habegger teaches a wall comprising courses of the blocks of Fig. 15 as in claim 1.

Regarding claim 7, Habegger teaches insets seated on the protrusions of the block of a second course.

STATUTORY BASIS - 35 U.S.C. 103

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

REJECTION - 35 U.S.C. 103

Claim 8, is rejected under 35 U.S.C. § 103 as being unpatentable over Forsberg, U.S. Patent Number 4,914,876 in view of Habegger. Forsberg teaches a retaining wall including a

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supporting matrix between courses of blocks for providing an anchor for the retaining wall. Forsberg lacks the blocks having the protrusions as described in claim 6. Habegger teaches a block of the configuration of claim 6 which results in secure seating of the blocks of an upper course on a lower course without the necessity of pins . For providing a block configuration which does not require the complex assembly process required by inserting pins, it would have been obvious at the time the invention was made to a person having ordinary skill in the art, to use blocks of the configuration of Habegger in the retaining wall having an anchoring, supporting matrix as in Forsberg.

Claims 2, 3, 5, 9, 10 and 16, as understood, are rejected under 35 U.S.C. § 103 as being unpatentable over Habegger.

Habegger lacks the specific combination of angles claimed. Since no discussion has been offered in the disclosure regarding the selection of the specific angles, these angles are viewed as a design choice, which would have been obvious at the time the invention was made. It is noted that a discussion exists that one angle is chosen for allowing ease of removal from the mold, and one angle is chosen for holding the block in place, but no discussion exists about the basis for these particular angle choices.

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Any inquiry concerning this communication should be directed
to Christopher Kent at (703) 308-2497.

Christopher T. Kent
October 2, 1995

Christopher T Kent

**CHRISTOPHER T. KENT
PATENT EXAMINER
GROUP 3500**